

FSM SUPREME COURT TRIAL DIVISION

PACIFIC FINANCIAL CORPORATION
n/k/a PERSONAL FINANCE CENTER,

Plaintiff,

vs.

KALANY DAVID,

Defendant.

CIVIL ACTION NO. 2015-1017

ORDER DENYING SUMMARY JUDGMENT

Ready E. Johnny
Associate Justice

Decided: November 4, 2016

APPEARANCE:

For the Plaintiff: Michael A. White, Esq.
Law Offices of Michael A. White, LLC
P.O. Box 5222
Saipan, Mariana Islands MP 96950

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HEADNOTES

Civil Procedure – Motions – Unopposed

By rule, failure to oppose a motion is deemed a consent thereto, but even then, the court still needs good grounds before it can grant the motion. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment – the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

Statutes of Limitation – Accrual of Action

In a cause of action on which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds; Statutes of Limitation – Accrual of Action

When no admissible evidence is submitted to prove the last item alleged in the defendant's

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account – an alleged October 21, 2011 payment – and when the plaintiff has submitted affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the June 15, 2000 principal balance of \$1,075.17 equaling \$4,164.70 between then and October 6, 2016, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000. The plaintiff has thus failed to show that there are no genuine issues as to any material fact on the defendant's affirmative defense of statute of limitations. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes again before the court on the plaintiff's September 13, 2016 Renewed Motion for Summary Judgment, which the court considers a supplement to the plaintiff's April 7, 2016 Motion for Summary Judgment since the renewed motion. No opposition was filed to either the original motion or the renewed motion and, by rule, failure to oppose the motion is deemed a consent thereto. FSM Civ. R. 6(d). But even if there is no opposition, the court still needs good grounds before it can grant the motion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994); Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment; that is, the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

One of the defendant's affirmative defenses in his answer is the six-year statute of limitations. The plaintiff, relying on 6 F.S.M.C. 807, asserts that this suit, filed October 21, 2015, is well within that statute of limitations because the defendant's last payment on the promissory note was made on April 20, 2011. The relevant statute provides that "[i]n an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account." 6 F.S.M.C. 807.

However, no admissible evidence is submitted to prove the last item – the alleged October 21, 2011 payment – in the defendant's account. Moreover, the plaintiff has submitted evidence, in the form of affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the balance of the principal amount of \$1,075.17 remaining as of June 15, 2000, equaling \$4,164.70 between then and October 6, 2016. From this evidence, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000.

The plaintiff having failed to show that there are no genuine issues as to any material fact, its summary judgment motion is denied and the court's previous order granting partial summary judgment is vacated.

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